Incomplete

G. R. S. IX-5]

Previous references. 1835

191 .

(Courts)

File No. 2 of

Serial Nos. 1 — 2

Later references.

Laminate & file p35 too

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1 — 22

Part B for August 1845

SUBJECT.

Prevention of vexatious and unfounded Litigations.

Ordered

W D 88—GPB—50,000—24-7-16

I think that two classes of Purchases, might be formed with great benefit. The best qualification would be Household property

Proms of all castes should be obliged to serve. The way to establish this qualification, would, I think, be to survey and register all the Houses in the towns, and upon the principle, either of the quantum of land attached to, & covered by each; or by what the Rolls. Jack would be, if

inhabited by Noctur-
-nal Prayers; or by
the number of Units
composing each, the
qualification should
be fixed. It should
be so fixed, as to
include all that class
of persons heretofore
employed in Funerals,
and all the wealth, re-
-spectability, and
intelligence above that
class.

When thus fixed,
I think perhaps we
should from the top of
the list, might be
separated from the re-
-mainder to be con-
-sidered as it were
"Grand or Special
Prizes", to be employ-
-ed as hereafter men-
-tioned. To the Re-
-mainder by qualification,

might also be added any persons, who from high character, family, or education, the Superintendent might think worthy to be separated from the crowd.

But besides for the inhabitants of the Custodial towns, I think there should be a qualification for landholders, and inhabitants, of the villages in the country; and perhaps it should be comparatively higher than the qualification in the Custodia.

These Country Prerogatives should never (except in Cases of necessity) be called upon to serve at the

a greater distance than 12 miles (perhaps) from their places of residence.

The Special Magistrates shall not be employed in any petty criminal or Civil Cases; in no Criminal Cases at all, except such as come into the Superintendent's Court; nor should they be employed (except in Cases of necessity which may happen in the Islands) in any Civil Cases, except such as come into the Supd't or Honorary Court. All appeals from the Courts under Her Majesty, should however be decided by them. All matters of

of Caste / for they will consist of all castes, should be referred to them only. To a certain number of them, might I think, under restrictions, be entrusted the repair of roads, the cleaning of the towns &c. at Bryone at any rate.

The second class of Panchayets would have the entire supply of Panchayets to the Amils, the Moonsiffs and after the Moonsiffs Court also. They would have all petty Criminal matters, and all original investigations, where no Malkazee / only the Cognizance / would be required, and for these matters, I think, they

would be found sufficiently intelligent

I think also, that after the 1st list is made, it should be required that a man have served, as Punchayet of the 2nd Class for two years (say) before he can be included amongst the Special

No person under the age of 20 to be qualified.

When a House that is qualified to return a Punchayetdar, contains a Family of Father and Sons, brothers &c. &c. every male member must be liable to serve. The Head, (except in cases of brothers of an undivided Family, where Father is dead, when

all will be Specials, so long as they are undivided, of the family only, on a Horse of Special qualification, to be registered as a Special.

I think this answers is likely to breed emulation.

Immediate to receive a certain daily allowance, while sitting, restriction of course will be necessary to prevent them being abused by unnecessary delays, a larger allowance to the Specials than the others. In case of appeal this might be paid by the appellant. Immediate to be summoned three

days before the sitting required whenever it is practicable but if impossible should be kept in ignorance of what cause they are called upon to try. All persons unable to attend from sickness will be excused, upon their sending a qualified substitute. Perhaps it would be better in these cases for others to be summoned by the Crier. Persons unwilling from any cause to attend, to supply a qualified substitute, to whom they must pay whatever it is decided they receive daily. Persons making frivolous excuses, or shewing a general

general unwillingness to attend, or disregarding the summons, to be fined at the discretion of the Judge of the Court, to which they are summoned. An Appeal to the Superintendent from these fines.

Persons hereafter becoming qualified for Recruits, minors having been included in the minor class, are first of all for two years, to be included in that class.

Persons superintending Encampments, should have the directing power of the Judges in District Courts to whom they should in all Criminal Cases distinctly point out the facts

to be decided on, and endeavor to prevent as much as possible the wandering from the subject at present so common, and the including in the Inquiry persons who are not on their trial.

In all cases, when matters of Hindu or Mahomedan Law are concerned, the written opinion of the Mufti or Pundit should be obtained before trial, stating what the law will be provided the facts alleged by both or either Parties, are substantiated. By this opinion (after the facts are found), they must be obliged to give a Judgment.

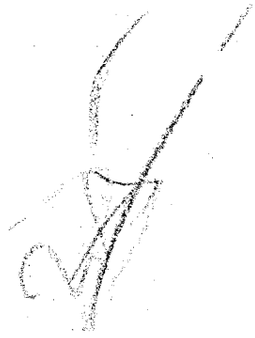
Now that the appeal from Panchayet is not allowed, it be=
=comes us to watch their proceedings very narrowly. -

When their decrees were liable to be re=
=versed, they were na=
=turally careful, and the parties to the suit were not so apt to offer Bribes as they now will be, when they are aware that the decision given in their favor stands no chance of being reversed, unless they are so foolish as to bribe before witnesses.

I feel very much inclined to think, that a personal decision which gives the right of

of Appeal, will
soon be more popular
than the Jury with-
out particularly
among the poorer
classes, who will
always fear Bribery,
if their adversary
is a man of Wealth.

Yrs. H. M.



Some
Remarks
on the
Religious, and
Human — &c.
the Intellectual
result of the
Abolition of the
"Institution — Tree"

J. J. Harrod
Pvt. Cyl.
Feb'y 11. 1830.

Remarks on the Abolition of Institution-Fees

4

Observations above Taken, and the Opinions of the Sub.Es on the result of the Abolition — The Petition from Bangalore does not appear to have been yet received.

In Rungoon and Astrakan litigation has much increased — In Cuttalore Fees appear to be none — and very few applications to the Courts till before and after the Rule was rescinded.

The decided Objection of the Court of Directors to anything like an obstruction at the entrance of the Courts of Justice, thereby their positive command to repeal Col. Briggs Stamp Regulation, has construed by analogy — and applied to "the Institution Fee" settled the question of "Fee or no Fee" —

Civil Litigation increased to double the Amount of Fees, and double the number of original decrees were confirmed by the Court of appeal — Hence appears in the 3 Returns furnished — No certain deduction in favour "of retaining an abolition fee could be made" — For Commerce has increased — Confidence in the British administration, has taken Place of distrust of the Native — — and the Spirit of Litigation, which has carried, and will carry Natives in all Parts of India, into as many Courts of Appeal as they can by Regulation allow — remaining the same — the Confirmation of original decisions cannot be laid at the door of the Abolition —

In the Letter of the Superintendent I have made a few hasty remarks as I read the Returns —

The Increase of Appeals is a natural

Month, and considering the heavy Expenses they have already, must-well lead them to suspect any apparently innocent Mode of Oppressive Litigation-

But an "Arbitrary fee" stops more than Litigation - for it stops Justice, and that in Limine - & - not because the Court is vexatious (for it is never addressed - or heard - and therefore this reason cannot strictly be urged) but because the Plaintiff is Poor -

For no one who is wronged, and can pay to be righted - would be deterred by the Rule - - unless he had no Confidence in the Justice of the Tribunal which is not here pretended - -

It is because he is poor then, that - being disproved - he must continue to be so - may incur so - once by the Man against whom he would complain if he could not by the Law because he is in a state inviting Oppression - i.e. poor, for the Rich seldom suffer, in Proportion even in the most civilized Countries - and the Poor in Mysore have been well nigh from time immemorial until they rose in 1832.

There is one reason assigned in one of the Letters conveying the Orders which I cannot note it is - that by abolishing the Fee "the more frequent" Judgments of Appearing in Court of Justice - after a dismissable

Plaintiffs — What is meant by disreputable. I do not see clearly except it means poor — for a disreputable man may not have had the fee — and used the "Hyde Park" Man before it was abolished, it must then mean Poor —

Nay, if the Hyde Parks be not openly declared above the Law — they will not have their sapping the Judgment of appeals in a Court of Justice can be ~~removed~~ retained

If Plaintiffs, We are sure — they may put up with the Injury, and not sue — and this will be no great sum — and save the debate some few arrears — ~~If defendant~~

But if it is meant, that any Regulation tending to prevent these Hyde Parks from fulfilling their Institutions, should be therefore upheld — and their Plea, of being degraded, by this must be admitted — Then were better to declare so openly, that the Poor Man's Cause inquire all whenever pleading an account, if his acquaintance were one of the "Hyde Parks" — If so — of course he would decline having any business with him — knowing he was liable to be insulted

Barbers — a Black Man can say, and does say — a Waiter — and such a Plea as this, has no Importance at all to be combated

The Question of Arrears however has Importance, and that part of the same Nature as the Question of Institute fee or no Institute fee —

Tax
the one would be a denial of Justice - Theory and Practice - The accumulation of Arrears is a virtual denial of Justice Practice - and is sadly to be complained of in consequence -
There seem to be but 2 Remedies and the application of either of them depend exactly upon this fact or its reverse - viz. Is the Increase of Suits caused by the Increase of Commerce - The Relief of the current of Public business - into its legitimate Channel, and the return of Public Confidence in the Courts -
If so the supply of Justice must be made equal to the demand, and the Judicial department rendered more effective - Now it now is -
Is the Increase of Suits to be attributed or the Contrary to the greater facility afforded to Litigants? vexatious causeless Litigants -
Now it would be hard to say that any Motive was for deterred from Litigation by the Amount of an Institute Fee - what after all the may not have to pay in Appeal, false may pay his agent, Attorney and Counsel fee, and Costs paid by the defendant and if he are deterred by this Institute fee it is plain that while he is deterred - the Poor man is more - He is prevented -
The evil then counterbalances the good - and the Fee is to be abolished
Now Mr will you remedy the accumulation of arrears -
If I was allowed the liberty of my vote - Remedy would be my vote - Mr Folkes

& England, and indeed - all Civilized Countries tho' the Poor be not prevented from entering a Court of Justice by "an Instituit. fee" - The Litigious Mania is prevented by the fear of the great and various expence of being cast, or Nonsuited. - That expence exists not here, and yet if it only acted in preventing the Prosecution of false claims - it were to be wished as a Moderate Check - and to be rewarded for - Now, the great end of all Courts & all Causes, is the Speedy and quick redress of wrongs - and certainly of Justice where ever all follows -

If the character of the Inhabitants be such as it is in India - greatly given to Vexatious litigation, - and if the Court of the Country, as it is India, cannot afford to employ sufficient Servants to clear off Arrears - occasioned by these litigious disputants and their wilful Prosecutions - then either the Vexations and Frivolous must be effectually deterred - or Justice effectually denied, and that too in an aggravated way denied to the good, and to oppressed, by the evil Practices of the Malignant - and Influential -

Some Regulation is as much to punish & really vexatious litigants - as it is necessary to have a Court of Justice at all -

Let a few cases - delayed many years, in consequence of arrears be narrowly traced, and it will be soon & clearly seen that a delay of Justice is a denial of Justice.

Such a Regulation may be made and every Purpose of Justice answered by a

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It may not be the Practice
at the termination of a Suit - Let
the Judge certify to the European
Supreme Court of Appeals, that
a Writ of Error, and let a
Writ of Restitution be issued to the Party
levied -

Errors from such Courts
will not cease, and the
Court of Justice will remain open to
the Poor -

J. Marshall
Chief Justice

Dec 6th
1830

Remarks on the Papers connected
with the abolition of the Institution fee.

In the abolition of the Institution fee the result of a years experience has shown an increase of litigation to an extent that threatens eventually by the large accumulation of arrears to approximate in practice to a denial of Justice.

See the reports of the Supts of Nuggur & Ahmednuggur

The strongest objection urged against this tax on justice by the advocates for its abolition is that it falls most oppressively on the poor man by preventing him from recovering his right from inability to pay the fee. It is difficult to ascertain how often this might happen under such a regulation - but it would appear from the report of the Ahmednuggur Superintendant that the great increase of litigation in his Zillah since the fee was abolished has not been from the poorer classes but from among Merchants and tradesmen who are better able to pay law expences - and that out of 356 cases there in which Riots were concerned amounted to only

Par. 19. of reply dated 12th Novr.

14-

It may readily be admitted as observed by the same officer that the Riot does "form that class of the inhabitants that stands in the most important relation to Govt. inasmuch as that from him (the ryot) the principal part of our revenue is derived - the in fact tho' generally of the poorest class does contribute more largely to the exigencies of the State than any other - It is from him chiefly that the funds are raised out of which both the

Military & civil Powers are fused: and the
subject receives protection from the one from
whom foreign foes, so does he seem entitled to obtain
protection from the other when he has justice on
his side against his domestic enemies— In
his large land tax he in fact gives more than
his quota to the exigencies of the state, and for
that payment, he might fairly be granted exe-
-mptions, that without injustice may be withheld
from others— Viewing the question of fees
then merely as a local one could not a stat-
-ute be so framed as to exempt this class
from such legal exactions while it demanded
them from others better able to pay? and who
in fact do not contribute their quota towards
defraying the expence of those very courts in
which they seek redress of their supposed wrongs—
Let the Rule when Plaintiff have the privilege
of suing "in forma Pauperis" and the objection
of most force to the fee would be nearly elim-
-inated—

It seems that the most fertile source of
litigation, is debt— indeed this one cause one
-erates more civil actions than all others to-
gether— The Astorgam Superintendent
absences that since the abolition of the initiation
-tion fee it is observable that the claim set
forth in the Plaint has been greatly exaggerated
and urges as a second civil attendant on that
measure is, its tendency to encourage the

see letters from Nugent & Astorgam

See letter 20th Jan. 1836—

practice & thereby increasing the difficulty of coming to a just decision in proportion as truth is departed from — This remark is very just and no doubt one of the greatest impediments in the administration of justice to natives of this country consists in having to combat with that hitherto unconquerable habit of theirs of adding to the truth — when truth is on their side — and when they have a just cause in not setting it on its own merits, but so distorting & exaggerating their grievance as to render any part of it almost incapable of clear & satisfactory proof — It seems desirable that every effort on our part as legislators should be put forth to lessen this peculiarity which the abolition of the fee has tended to encourage — and even should its restoration be deemed inadmissable, some regulation might perhaps be framed to check it — Probably a heavy fine, to the full amount of all demands in excess of just dues claimed in the Plaint might be found to answer —

But whatever may be thought of levying fees on original suits; it appears I think desirable that no Appeal should be received without the appellant first giving security for the payment of a fine proportionate to the amount in litigation, should the former judgement be confirmed. The system of allowing free appeals from Court to Court without check or limitation is much calculated to retard business & increase arrears to an unlimited extent. Few natives can be expected to rest satisfied with the

judgement of a Court against himself, when another chance is open to him without risk or expence by an appeal to a higher tribunal, and the suit does not seem limitted to the loss of time & but it is likewise calculated to bring the lower Courts into contempt. In the Municips' Court in Algiers 9 out of 17 appeals were decided in favor of the original decree. In the Superintendants Court of the same Dist 4 appeals of 3 Special appeals besides two other decrees under preparation when the report was made, in the whole of which the original decrees remained unaltered. In the Mayor Municips Court 8 out of 17 of the original decrees had been confirmed - these form pretty strong proof that in a majority of cases the appeals are Vexatious, & probably few would be made if costs were demanded.

There seems to be a wide difference between giving a people cheap justice and encouraging a litigious Spirit by making it absolutely free - & of allowing of appeals from court to Court till it reaches the Supreme authority in the Country without cost: and experience has I think shown in some cases that the final judgement of the Court has failed to satisfy the loosing party that justice has been done to his cause.

It appears to me that whatever is obtained free of cost is generally despised in ~~Value~~ worth in the eyes of mankind, and on this principle I doubt not that our Tribunals by being entirely free of cost & with leave

of appeal gratis from the lower to the higher, take much of that respect that would attach to them under a different system. Let the door of justice be made easy of access to all who need to enter but let it not become a public thoroughfare open at all times to the idle & wanton - and that to the serious inconvenience of those who have important business to transact therein - let it not in fact tempt people to go to law for trifles & frivolous causes by the ease of filing a suit.

A well regulated institution fee to be remitted borne by the loser of the suit seems as simple & just a method of checking this growing suit of litigiousness as any that has been suggested

J. Wigg
Lt Adt

Bangalore
Febr 18th 1836

Memorandum
regarding the
Courts of Mysore
under Pursewals &
H. H. Rajahs.

extracted from Lt.
Col. Briggs
Minute — and
Col. Wilks
Report —

Memorandum regarding the Courts of Mysore during the Minority of Poorneah, and H.H. the Rajah.

In the year 1805 Poorneah established a Court of Adawlut at the Capital for the Trial both of civil and Criminal Cases —

It consisted of Two Judges - called Buksies Two Recorders - or Veristradars - six Pycolies or guards & six Aspectors forming a Jury or Punchayet — The Court was further assisted by one Mahomedan and one Hindoo Law Officer — In all 18 Persons.

This Court assembled daily in the Hall of Justice, and heard causes either conjointly or separately according to the Nature of the Case —

Whenever mercantile accounts were brought before them they either called in the aid of Mercantile Men who were embodied for the occasion among the Aspectors, or the accounts were then referred — to such Persons as were deemed best qualified to decide on them as a Court of Arbitration — The latter mode was always observed in all disputes concerning Cases.

Minor causes which could be most conveniently settled in the Districts from whence the Plaintiffs came were generally referred to those Districts

No cause was considered as finally closed & no decree passed until it had been submitted for the approbation of the Ministers Poorneah.

In the Districts, as recorded in Colonel Wilks's Report — three Soubahdars were appointed over the respective Provinces of — Bangalore, Chittledroog and Bednore, and these Officers directed the Proceedings in all important Cases, Civil and Criminal

Under these Soubahdars again were placed the Amildars of Talooks, who had superintended the department of Police, and determined in minor cases of Personal injury

In Criminal Cases the form of Procedure was as follows — — On the apprehension of any Persons criminally accused — the Soubahdar on the demand of the case for Public Trial — ordered a Punchayet or Commission of Five to be assembled in their Cutcherry

at which all respectable Inhabitants unconnected with the Party had the right of becoming Assessors

The Proceedings of the Commission, containing the defence of the Prisoner, and the evidence he wished to bring forward in support of it were forwarded to the Dewan — accompanied by the official Report of the Soubahdar or Amil —

In case of no doubt and of little importance — the Dewan used to make his decision upon the Inspection of these Papers

In cases affecting the life or liberty of the Prisoner — a special hearing was given by the Dewan — who pronounced sentence agreeably to the advice of the President — —

The Administration of Civil Justice was conducted in a similar manner, with that of Criminal. —

The Amil had the power of hearing and determining in first Instance and of otherwise all cases of disputed Property not exceeding Rs value five Pagodas

Causes to a large amount were heard and determined by a Punchayet — composed as above described, and as Authority was considered to afford Security against Irregular or Partial Proceedings the respectable Inhabitants were encouraged to attend as Assessors according to their leisure and Convenience —

In plain cases wherein no difference of Opinion occurred in the Punchayet the Amil confirmed the Award and forwarded the Proceedings to the President

In cases of difficulty or variety of Opinion the Proceedings were forwarded with the report of the Soubahdar or Amil to the Dewan who pronounced a final decision in communication with the President, or, if he thought it advised a Hearing before himself —

In all cases wherein the Parties had the right of Appeal to the Dewan, and this

frequent Tours thro' the Country, facilitated the Practice of the Rajah.

The Principal Court of Justice as established by Burnaby at the Capital continued without any change until the Rajah Brunsteir's death — In January 1812. after H. H. the Rajah had assumed the Reins of Government a new system of Jurisdiction was framed on the model of the regulations of the British Government — The Court of Nizamut Adawlut was altogether abolished and — and in lieu of it 2 Courts, one of Civil, and one of Criminal Jurisdiction, were established at Mysore — At the head of each was a Principal Judge named a Hakim, and a Civil Judge called a Bakshy —

These Judges were aided by a Mahomedan and Hindoo Law Officer, as in the Provincial Courts but by no Jury or Punchayet —

All Suits (were ordered to be presented on stamped Papers,) and (Litigants paid a per Centage on suits above 10 Rupees.) all of which the causes were pleaded by Vakeels of the Court who received no Pay but depended on the per Centage of the sum in Litigation, for their livelihood —

These and many other innovations of new Courts for medium of the New system —

The 1st Chief Judge appointed, named Bakshy Sahib being a Man of Vigilance and ability, the system worked well under his control, which lasted for 4 years — — At that time he required personal appearance in Person or by Vakeel of one of the Rajahs Relatives — The Rajah resisted the Writ, and the Judge refused to enter the doors of the Court — and two years elapsed in discussion, during which Period the Judge retained the Seals, and Justice was suspended

At last the Inhabitants wearied out by the vain & frequent appeals made to the Rajah and two Ministers assembled in large Bodies and threatened the Palace

the Body-ood-deen Sahib was now appointed Bakshy - and he held the Office for 6 years, but was eventually dismissed upon Complaints of Corruption

The Cazy of the Court - Syud Ali Asmani officiated, but without having the Title of Bakshy a Even the Seals of the Court - His Administration lasted only 10 Months. - He was succeeded for the time by a Brahmin Sreenewas Row - who again was removed in 3 Months - and was replaced by one Rajah Khan - He filled the Office for four years and about a year before the Appointment of the Commission he was removed to make way for Body-ood-deen formerly displaced for Corruption

There appears to have been no change during all this time, in the Jurisdiction, and forms of Procedure adopted in the District - if an exception be made with regard to such cases, as were entitled to an appeal to the Presence, when H. H. the Rajah, according to his pleasure, either referred the appeal for enquiry to the Adawlut - or decided himself by the assistance of such of his Officers, as he chose to call upon for that purpose, causing a Record to be written, in which was embodied his decision -

Nov: 1814
1830.

Memorandum of arrangements regarding the native Punchayets to be held in all the Public Courts at Bangalore.

A great delay has occurred in this and other Courts at Bangalore for deciding the original Civil and Criminal Suits for want of respectable native Punchayets whose complaints regarding the requisition of their continual employment in all the Courts have been also taken into Consideration The following mode appears to be well calculated to prevent delay and inconvenience on the occasion.

2 The accompanying list will shew the selected merchants in the 52 Pettahs of Bangalore to the number of 220.

3 From this and other several merchants of Bangalore, a number may, on examination, be selected by the Superintendent as fit for Punchayets, say to the extent of 200 only - their names to be

registered in the Book at his Office —

4. This number of 200 Merchants may be Converted into 4 to 10 Punchayets in the proportion of 5 to each Punchayet, and to be appropriated for the Courts of Amildar, Moondiff, Superintendent and the Adawlut, registering the names of the Members thus selected, and specifying the names of the Courts for which they may be appropriated, in order to prevent any Confusion regarding their employment when required at one time in all those Courts. —

5 Four Setts of Punchayet may always attend the above four Courts one at each Court, and to be exchanged with another, every three days after, which makes 10 Punchayets to every Court for one month. —

6 If the Punchayet Cannot be exchanged without finishing

the

a Case, with which they may be entrusted they may further be Continued - until it shall be Completed, for which purpose they may be indulged not to attend the Courts on the days of their next turn directing of Course the attendance of the other Gett of Punchayet who had not done their duties on those days in Consequence of the indulged member being Continued longer on duty -

7 If the Punchayet requires a leave on the days of their turn, it may be duly granted by the Courts noting the same in their Books of Decay. -

8 The opinion of the Punchayet Cannot be modified or altered by the Heads of the Courts and if they do not Concur in their opinion they can state their own reasons to that effect, and pass their own decree, without a least Consideration of the Punchayet, the higher Courts are to judge only as to the merits

merits of the difference in opinion between Punchayet and the Courts in Case of appeal only —

9 No Punchayets required to be held on the Civil Cases of appeal and also on the Criminal Cases when the opinion of the inferior Courts guided by that of Punchayet, required to be decided, but the Punchayets are required on all the original Civil and Criminal Cases in every Court. —

10 The Punchayets thus directed may receive every mark of respects from the Courts on which they may be employed and may be considered as entitled to every indulgence of Justice whenever they may have their own means of promotion either in the Rank and merchandize amongst the merchants of the Pettahs.

11 In Case of any Corruption or the gross partiality be proved on the part

of the Punchayet, in deciding the Cases referred to their opinion, the Court will be empowered to take the immediate steps of making a regular investigation into the matter, they may if proved be liable to the punishment, as the Case may deserve in Common with others.—

12 The town of Bangalore is so large, it is not difficult to take all the names of the respectable merchants and make an easy selection of 200 members as required, if the Superintendent do not think any of those mentioned in the accompanying list fit for the intended Punchayet.—

13 This arrangement if approved may prevent any unnecessary delay in deciding the Cases on the part of the Court. and may also provide against any inconvenience from frequent attendance on the part of the Punchayetis.—

Opinions of the Superintendents
regarding

Institution Fees -

The Subject of Astagram -

Abstract No 1.

Reports that since the Abolition of Fees, on a comparison of 3 Months the Suits in the Salooks have increased more than one fourth - and of those decided, more Claims have been withdrawn, dismissed & destroyed, and dismissed than proved.

Abstract No 2 -

That on a Comparison of the Number of Cases instituted in the Zemindari Cutcherry at Astagram and the Salooks of Bhyrone and Serrigachatam - for the 1/2 year immediately before the Abolition of the Institution Fees - and of those instituted for an equal Period of time in the Moonsiffs Court - and the same Salooks after the Abolition - it appears that the Increase is as 300 to 60 - and of those decided - the Restoration dismissed destroyed and withdrawn equal the number proved exactly one fifth -

Considers that the Litigation which has been fostered, has not arisen from legitimate Causes -

That debtors accepting by this remedy of the delay occasioned by the arrears of causes - refuse their just creditors, and care not to have a decree passed against them at last; since the expence is so trifling, and the Rate of Int: allowed by the Court lower than that they can obtain out side. during the Period they have detained the debt -

That many instances occur of false Claims preferred maliciously against Men of Character, by Men of low rank and no character, - the latter being aware of the Injunction entertained by the former, of the Indignity of being dragged into Court -

Supt of Aragram

Believes that the delay occasioned by the unnecessary investigation of false Claims, acts as a great bar to Justice and is loudly complained of.

In appeals - the Majority filed with the Prosecutor - have ended in Confirmation of the original decrees - and all filed with the Suit have ended.

Is in favour of restoring the Institution fee.

Supt of Rugger -

States that the number of Suits pending in the whole Division has increased in the course of 12 Months since the Abolition of the Fee from 162 to 396. - that if the arrears increase in the same Ratio, years would elapse between the filing and hearing of a suit and Justice would be stopped. unless the present Judicial Establishment were increased.

Believes the main Cause of this Increase of Litigation to be the removal of Law Expences.

That the Amins, having more to do in the Revenue Line than formerly - have perhaps decided fewer Judicial Cases, than they were used to do

That in Appeals the Proportion of decrees confirmed and reversed are nearly equal.

That the Amins are universally of Opinion that the Abolition of Fees has been injurious and he himself on a mature consideration of the Case would advise their re-adoption

Supt. of Bangalore.

Submits returns by which it appears that the suits filed in his Division, for a year after the Abolition of the Fees — exceed those filed in the year before the Abolition by 500 causes.

Supt. of Shikarpoor.

Observes that both the Moonsiffs in his Division recommend the system of fees to prevent Litigation —

That there is very little Litigation in his Division, and the materials for forming an opinion are therefore scanty.

Thinks that the system of fees would be oppressive to the Poor Man.

Remarks that out of 9 Appeals filed in his Court — 2 decrees were reversed or altered, and 3 confirmed — the Parties in the last not appearing — the Items were still unheard.

Inclines to think that the substitution of fees would rather foster than prevent a spirit of Litigation —

attached
Nov: 5.
1836

Institution Fees

Abstract of the
Returns of
the Superintendents

—

Passed
2nd Apl.

Some Remarks regarding Punchayets -

If it be determined to remunerate Members of Punchayets for their attendance - it seems but just that the Costs should be borne by the Parties - or rather the losing Party in the cause - & thus two desirable objects would be attained - Vexatious Litigants would be deterred, and the attendance of Punchayets secured -

The Rate of Payment should not be computed entirely according to the number of days, on which the Punch actually sat - But at a Rate referring partly to the Time of the sitting, partly to the sum claimed - and this arrangement would operate to prevent the Plaintiffs from exaggerating their demands.

Besides, another advantage would accrue from fixing the remuneration thus - viz - with respect partly to the amount claimed.

For All suits of great value come into the higher Courts - Adawlut - Supt or Moonsiff - It may be presumed that the higher the station of the Punchayetdars, (say Large Sowcars &c) the more valuable is their time - it should then be paid for accdly - This may be effected by the Rule above mentd, if, as is proposed, a separate Punchayet List be prepared for each Court - those of the Supt & Adawlut consisting of the Chief Inhabitants -

In criminal cases the remuneration must come from the State - It does not appear that the casual assembly of Punchayetdars in Places where there is no permanent Court - as the Moonsiff and Supts - is matter of hardship to the Persons summoned - It becomes matter of consideration therefore whether the Plan of remuneration should not be confined to the principal Cutcheries -

There is little fear of partiality in criminal cases - but more of ignorance - In the Talooks therefore, if Punchayets in Criminal Cases cannot be rewarded by the State - a List of such Individuals to be considered as Permanent - Criminal Punchayetdars might be made, without hazard - provided they be Inhabitants of respectability.

In the Regulations, if any be promulgated

it would appear to be important to introduce as few novelties as possible — the survey of Houses, and regular Registry. this if of great use — would probably cause considerable alarm — the Courts have already sufficient information by the account of the Taxes, to furnish the necessary Lists —

I do not think that it would be of any use, in the present state of the Scotch Laws to introduce any rules of Evidence — or any exact form of Enquiry — the object — viz to elicit the truth, is probably best attained by the rambling and desultory mode of examination now prevalent among the Natives — when a Punchayet —

If they were to adopt any other mode the Witnesses would not conform to it —

There is scarcely any Inconvenience in the system of Punchayets as now in practice but — will be met by two arrangements viz increasing a proper, and sufficient List of Members to serve — and

2 Remunerating them. sufficiently to induce their attendance —

A few Regulations may be useful. as

1 Not to examine the Witnesses within hearing of each other —

2. To elicit no Information from the Criminal in proof of the Charge —

3. To commit no Parties to Prison, merely because they are relatives of the accused —

4. Carefully to avoid any hardship to the Prisoner — who may be thereby deterred from defending himself — thinking that by total submission, he may be pardoned

5 — To sit so many hours a day or not to be entitled to remuneration

6 — To deliver separately their summons and care to be had that at the making

and signing the Praises all the Members be present- and affix their Marks, against their Names-

7. In actions for goods, to award their return if possible, rather than a sum arbitrarily fixed as their Value-

8. In examining Witnesses, to direct their attention to what they have a correct knowledge themselves, rather than what they have heard others say that they know-

9. To apply to the Head of the Court, in all Matters in which they doubt- or require Instruction-

10. Carefully to avoid any conversation, out of doors, with the Parties to the Suit, or the Subject of the Trial, whilst pending.

11. Before any Confession of the Prisoner- to tell him plainly, that what he says will be kept in Evidence against him.

12. Not to hesitate, where they think a charge has been maliciously made, to report so to the Head of the Court- that the Costs may be punished-

Besides these some useful hints might be had from the general Rules regarding Evidence observed in the Courts in England-

H. Halsted
Ind Asst-
Nov 8. 1830.

Sl 4/1.

From

Colombo

2-1-18

HD

the Junior Asstt
in charge
Engineering Drawg -

Dated 15th January -
Rec'd 20th

Acknowledges letter
(Circular) No 2 of the
5th January with a
Draft of amended
Rules for the prevention
of vexatious and unfounded litigation
and forwards re-
marks connected
therewith.

Into
Ch. 11

57

To
The Officiating Secretary
to the Commissioners for the
Govt of the Territories of the
Royal of Bhopawar

Sir,

I have the honor to acknow-
-ledge the receipt of your Circular &
D.d the 8th January forwarding a
Draft of amended Rules in substi-
-tution of those published on the 22d
March 1839 and requesting by the
Commissioners desire my opinion &
any suggestions that my local exp
-rience may enable me to give.

2. The Rules appear to me
to be well adapted for the purpose
required, viz. the prevention of vexa-
-tious and unfounded litigation, but
I respectfully beg to observe, that
the 2d Para requiring the Defendant
to observe the same form as de-
-manded of the Plaintiff strikes
me to be a rule, the result of
which would act considerably in fa
of the

of the Plaintiff, by exposing the
nature of Defence and evidence which
the Defendant intended to pursue in
support, or to refute the charge
brought against him, which would aid
the Plaintiff in regulating any doubt-
ful part of his suit, and guard him
against producing false documents
or evidence, the Plaintiff from the
Commencement has the privilege of
framing his plaint in whatever form
appears most advantageous to himself,
and of lodging it in Court at the
time most convenient to meet the
end desired as respects himself, and to
impair the strength of his Defendants
means to dispute the Claim; all of
which seems to me to be secured
already in favor of the Plaintiff.-

2. In the same Para wherein
the Judge during the inquiry is allo-
wed on a viva voce examination of
the parties to use his own discretion
to summon further witnesses or cause
the production of further documents,

or

or not, as he thinks fit, strikes me to be open to some objection as affording parties a plea to make appeals from his decision, by misrepresenting his conduct in the viva voce examination, and also stating his inability to judge of the nature and extent of evidence that might have been obtained had he summoned the witnesses, or caused the documents to be produced, which had formerly been demanded by the parties, or it is likely that they will be far exaggerate the importance that such witnesses, or documents would have been to their original cause that it would appear unjust not to admit their appeals, or to require an explanation from the judge on the subject which would occupy no small portion of his time, and as there might appear to be after all sufficient reason to admit the appeals it appears to me questionable whether the proposed rule would meet the objects

object in view. —

I have the honor to be
Sir
Your most obedient Servt

Nugent Dundas
Superintg Officer
Portsea 15th January
1841.

Junior Asst to the Com
in charge of the N. Dept

1841

From
the Superin Charge
of Cattaraugus

Dated 16 [illegible]
Recd 19 January.

Acknowledges Letter
Circular Ltr & Letter
Supt Instr and submits
a suggestion modifi-
cation connected with
the amended Regulation
for the prevention of
unfounded litigation
in the Courts, and
submits statement
of Civil Suits disposed
of in his Court, shewing
the sums claimed to
have been six times
the Amt of the sums
decreed. —

Chittaroog Division
Superintendent's Office

No. 9

To

The Secretary
to the Commissioners
for the Government of Mysore
Bangalore

Sir

1. I have the honor to acknowledge the receipt of your Circular No. 2. dated the 8th Instant forwarding for such suggestions as might occur an amended Regulation for the prevention of unfounded litigation in the Country and accordingly beg respectfully to submit the following trifling modifications for the consideration of the Commissioners. —

2. For Paragraph 3rd in the Draft I would beg to suggest that the following should be substituted. —

"Para 3" The Plaintiff shall be required to state in his plaint, the names of the Witnesses whom, and the nature of the documents which, he intends to produce at the trial — The defendant when

Summoned

summons shall be required to issue the same form. But if in course of the trial any further witnesses or documents should be called for by either party, the Judge shall not cause summons to be issued requiring the attendance of such witnesses, or the production of such documents unless" the Punchayet be "satisfied by the viva voce examination of the parties that the said witnesses or documents are material evidence in the cause" Provided always that it be considered the bounden duty of Judges and Punchayets to call for all such witnesses and documents as may from the particular inadvertency or ignorance of either party in the suit be necessary for its full investigation and equitable decision and that no omissions on the part of Plaintiff or defendant in this respect should exonerate the Courts from their responsibility in rendering full and ample justice to those who come before them.

In

3. In Paragraph 6th I would suggest that after the words "when payable by the Defendant to the amount decreed, instead of "the Judge being allowed to remit the fee" it should be enacted that "the Superintendent be allowed to remit the fee upon Special cause shewn". This would I think prevent partiality in some fine cases and protect the Revenue officers and Auxiliaries from being charged with it in many more: and as the exceptions only would come before the Superintendents it would add little to their duties. —

4. At the conclusion of Paragraph 7. I would add by way of explanation that "such fee or fine be of course considered recoverable from the other party if afterwards decided against him in appeal.

5. In Paragraph 8. at the conclusion after "not however in any case exceeding

3 Months I would suggest the addition of the following clause, "or in cases where satisfactory security in real or personal property be given for six months" my reason for proposing this is that I have recently met with an instance where a defendant possessed of property in Gardens and Land was enabled to save them from destraint and Sale by having a few Months allowed him to raise the sum necessary to satisfy the decree against him.

6. The whole draft is in my opinion a great improvment and taken in connection with that forwarded with your Circular No. 68 Dated the 22nd Ultimo for the Encouragement of Private Punchayets may be expected to do much for the amendment of the ..... administration of Civil Justice in the Country.-

7. In order to shew that the advantages

advantages anticipated from any measure for the prevention of vexatious Litigation have not been over-rated by the Commissioner, it may not be altogether irrelevant to subjoin a detail of the Civil Suits in the Superintendent's Court of this Division, which have been disposed of since I have been favored with Captain Outram's valuable assistance.

Original Suits

No.	Date of Institution	amount sued for			amount Decreed			In what manner—
		C.Rs	a.	P.	C.Rs.	a.	P.	
1	15th June 1837	200	"	"	32	1	2.	By Razeenamah

Appeal

1	1st January 1839	424	11	8	212	5	10	To Appellant
2	25th June "	60	"	"	60	"	"	To Defendant
3	24th July "	368	"	"	30	"	"	By Razeenamah 30 Rs decreed in Moonsiffs Court
4	18th December "	525	13	"	521	8	11	To Defendant
5	13th January 1840.	157	12	"	81	5	-	To Appellant
5	12th February "	160	"	"	40	"	"	By Razeenamah Rs 120. 8. decreed in Moonsiffs Court before the Institution of the Suit.
7	18th April "	400	"	"	"	"	"	Dismissed Appellant being absent
8	3rd May "	236	"	"	96	"	"	By Razeenamah Rs 236 decreed in Moonsiffs Court
9	22d December "	177	11	"	177	11	"	To Defendant
		1709	15	8	1250	10	11	

8 It will be observed from this Statement that even among a Population like that of the Chittledroog Division where the agricultural Classes so much preponderate and consequently where there is proportionably so little Civil litigation the Sums claimed have been Six times more than the Amount decreed.—

I have the Honor to be,
Sir,
Your Most Obed.t Servant

Kalay Kotay
in Chittledroog
16th January 1841.

Thos. Morris

P: Cahuac
Superintendent
in Charge

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1841

From
The Acting Supt.
J. R. Stephenson -

Dated 21st January
Rec'd 25th "
Acknowledges Circular
No. 2 of the 6th Instant,
with Draft of proposed
amended Rules for
the prevention of
vexatious litigation and
submits certain ob-
servations thereon

No. 16

To

The Secretary to the Commissioner
for the Government of the Territories
of the Rajah of Mysore
Bangalore.

Sir,

I have the honor to acknowledge the receipt of your Circular Letter No. 2 of the 8th. Instant, forwarding for such Suggestions as my local Experience may point out, Draft of proposed Amended Rules for the Prevention of Vexatious and unfounded litigation in the Country, and in reply, I request you will be pleased to lay before the Commissioner, the following observations which though not solely suggested by Special Local Circumstances I trust I shall be excused for Offering.-

2nd With reference to the 2nd. Para of the Draft, wherein it is enacted that, a Judge under Certain Circumstances, may refuse to grant a Writ, it appears to me that, it would perhaps be as well

will the model a clause to the effect that,
"In all cases of refusal to file a suit,
"the refusing Judge shall be obliged to
"state at full length upon the back
"of the rejected plaint, the causes of
"rejection".-

3rd In Para 4th it is enacted that, it shall be competent for the Court under certain Circumstances, not only to levy the Regulated fee on the losing party, but further to inflict a fine proportioned to the Delinquency of the party and his ability to Pay.-

4th I beg respectfully to observe that, so indefinite an Enactment appears to me liable to abuse, and might fail in some cases to reach the desired end. For from the mode in which the fine is to be proportioned, it seems assumed that the ability to pay, will always equal the delinquency of the Offender.- But this may frequently fail to be the case, and a great de=
=linquent might pass unpunished, if his ability to pay, as well as his delinquency

it to measure the punishment due to him.—

5th Doubtless a very small fine, to one man a severer punishment, than a very large fine may be to another, but sometimes many cases may occur in which no fine at all could be levied, while some might possibly happen, in which no extent of fine, that a Court could well arbitrarily adjudge, would suffice to punish the delinquent as he deserved.—

6th It appears to me that, such cases of "flagrant Malice and falsehood," as the extra fine is intended to provide for, would form fit subjects for Criminal Investigation, when, adequate punishment could of course be adjudged.—

7th If however it is decided to vest the Civil Courts with this summary power of punishment, it would seem absolutely necessary to lay down some definite Rules for their guidance,

Either

either by fixing a Maximum amount of fine to be adjudged by Each Court, or by providing that, no fine beyond a Certain sum shall be levied without the Sanction of Superior Authority. Some such restriction seems the more necessary, as by the proposed Draft, it appears intended to vest the lower Courts when they adjudge fines, with the power of levying them, on their own Authority; a power which at present they do not possess even in the Case of the regulated fine Calculated according to the old Institution fee.—

8th Trust, I may be excused for here drawing attention to the Contrast between the proposition to vest all the Courts in Cases of "flagrant Malice and falsehood" / the Judge alone deciding what is flagrant Malice and falsehood, with the power of adjudging and levying unlimited fines, and the small amount of fine to which they are at present restricted, in all Cases, by the Judicial

Regulations

Regulations.—

9th Para 7th insists that, after Judgement "the Court will immediately "order Process of Execution for the recovery "of any fee or fine that may have been "decreed to the Government," and Para 9 provides for the staying of Execution /apparently of Decree/ in Cases of Appeal. It does not however appear to me quite clear, whether or not the Collection of fees and fines, is likewise to be stayed.

10th A Suitor has 30 Days allowed him to decide whether or not he will appeal, and to prepare his Appeal Urgee, so that if Execution for the recovery of fees and fines is immediate, it is evident that they may be recovered, before the Suitor has decided whether he will appeal or not.—

11th Another question suggests itself to me on the Para, directing immediate Execution for the recovery of fines which is whether, in the event of the effects not being sufficient to cover both the

Decree

Decree and the Government claimed, the usual priority is to be given to the Government Claim.. If such is to be the case, the greater the Malice and falsehood of the Defendant, the less chance the Plaintiff has of recovering his just dues, even if his suit be successful.-

12. In Para 8th it is suggested that, the Court will not be required to carry any decree into execution, without an application in writing from the party or parties, in whose favor it has been passed and though a certain latitude is allowed the Court in the time of execution, it is in no case to exceed 3 months.- This strictly adhered to, might involve the necessity, of proceeding to execution on the goods of a Defendant, who had no means of satisfying the Decree, except from a periodical income which, or a part of which he is willing to give up; and thus a Malicious Creditor might, to gratify a bad feeling,

cause

Cause distress and disgrace to a well disposed and honest Debtor.- Perhaps this objection might be partly met by a Clause providing, that the Judge may refuse Execution on the Property or Person of the Debtor, if he considers any other mode of Settlement offered by the Debtor, is just.-

13th It may be also worthy of Consideration whether, some time should not be fixed, within which the Holder of a Decree, should be obliged to call on the Sircar for its Execution, or lose his claim to Government Interference.-

14th There being no limitation to the time, within which a Creditor must call for the Satisfaction of his Decree, he is enabled to hold it over his unfortunate Debtor "in terrorem".- The Debtor would perhaps willingly give up all he has, rather than be kept in suspense.- He is perhaps anxious to exert himself to retrieve his Circumstances.- He thinks perhaps that, he has an

opportunity,

Opportunity to do so, but his Energies are paralyzed by knowing that his Debtor may be down upon him for the Execution of his Decree, just exactly at the time that his doing so, would blight all his hopes.—

15th It appears to me that, when matters have been brought to an issue between Debtor and Creditor in a Court of Justice, the Debtor, as well as the Creditor, should be able to insist on the Government interfering finally to adjust the claim against him.—

16th By Para 10th the Court against which an Appeal is made on the ground of Corruption or gross partiality, is required to take from the Appellant, before forwarding his Appeal, sufficient security, for Costs that may be awarded on the Appeal.—

As this is in some degree Arms a Judge with the Power of Crushing a valid Complaint against himself, I would let

leg

beg to suggest as a means (the I
confess a very slight one) of preventing
the abuse of this power, that all
Judges rejecting Appeals for want of
sufficient security, be required to
report every Case of rejection with
the reasons that led to it, to the
Court, to which the Appeal was ad-
dressed, and that such Court should
have the power of ordering the Appeal
to be forwarded, if it thinks the
grounds for rejecting the security, —
insufficient. —

I have the honor to be

Sir,

Your most Obed Servant

Hutchinson

Acting Superintendent

The Attorney General
Montreal Division
Kingston
21st January 1841.

Ed Chapman Esquire

No. 10.

Super-intendents Office
Colar 23. January, 1841.

To

The Officiating Secretary to the
Commissioner for the Government of the
Territories of the Rajah of Mysore
Bangalore

Sir,

I have the honor to acknowledge the receipt of the Circular letter of the 8th Instant, with a draft of amended Rules for the prevention of vexatious and unfounded litigation, in substitution of those published on the 2nd March 1839.

2. The welfare and happiness of the people committed to my superintendence, being intimately connected with the Commissioners resolutions on this highly important subject, I shall briefly, but unreservedly state my sentiments regarding the proposed measures, founded in local experience, and by so doing I shall, as I apprehend, best meet the Commissioners views and wishes.

3 It appears to me that the whole scope of this draft presumes a much higher degree of general intelligence, judicial knowledge, and Innate add probity, than is to be found in the Inmor Courts of this Country. I do therefor most respectfully, but in all earnestness entreat the Commissioner to pause before he invests them

with

with the power of rejecting suits, witnesses, and documents on interlocutory examination, the decision even not being required to form part of the record, with the remission of fees and exaction of fines, and recovery of fees or fines decreed to the Government, by summary process, without the confirmation of superior authority.- My experience leads me to declare without any hesitation, that they are not to be trusted with the exercise of such grave responsibilities, and if the sense of the community could possibly be ascertained, I am fully persuaded in my own mind, that an overwhelming majority would be opposed to their being left so much to the discretion and integrity of their fellow countrymen.-
I clearly foresee, that as the investigation of civil suits may be so readily converted to a source of profit, many of the Amildars will neglect their more proper revenue duties.-

4. The object of the 1st part of the 3rd Clause I conclude, is to give parties as little opening as possible for the fabrication of documents, suborning or tampering with witnesses to meet unexpected contingencies in the progress of the trial; and for the very same reasons I think the names of the witnesses should not be inserted in the Plaint and answer, but that lists should be given into Court separately. A Rule of this kind is much needed.

5. By the 9th Clause of the draft, the privilege of appeal is dependent on a charge of

corruption, or gross partiality against the Judge, to be presented to him in open Court; and delivering good and sufficient security for the payment of the costs that may be awarded in appeal, as ruled in the 10th Clause.- I would observe that there is no obvious advantage in presenting the appeal petition to the original Court, and that so grave and public an accusation against a Judge seems, primâ facie, to demand a Criminal prosecution: it appears to Court unfounded complaints against a Judge, and tends to lower the weight and dignity of his position.- I am not aware of any good cause why the privilege of appeal should depend on the exhibition of such a charge, and conceive it would be advisable to give the liberty of appeal without any such restriction, since the appellant makes his appeal under peril, and with the knowledge of certain defined penalties. The revised Rules of appeal received with the Circular letter of the 8th March 1836 P. 30 authorize the Courts appealed to, to receive the appellants Petition direct, which custom may conveniently, I will say advantageously be allowed to continue.

6. The practice of the appellate Courts [being that observed in the Company's Courts] now is, to require security from the appellant, for the amount or value adjudged under the original

original decree if confirmed in appeal, which I consider sufficient; but if deemed necessary, security may also be required for the interest which may be expected to arise pending the issue of the ultimate decree.

In my judgment, any relaxation of the accustomed security on appeal is fraught with danger, for reasons so obvious as to require no explanation or comment: if a party be permitted to file an appeal, on simply giving security for costs, or expence of litigation, in appeal, an unappealed decree would soon be a remarkable occurrence.

7. The existing system of awarding fines in virtue of the Commissioner's Proclamation, dated 2nd March 1839 has already produced the most happy effects in lessening false and exaggerated claims, and for facts I confidently refer to my general report for the year 1839/40 dated 1st December 1840 under the head "Judicial Department." As observed in that report, there has not yet been sufficient time for the full development of all the benefits of the system; but that it has proved a great blessing to the country, is readily acknowledged by all men of ordinary intelligence and observation. The principal defect in this system is the delay in and difficulty of recovering the fines awarded, which is not authorized until the suit has been carried through all its stages, and in cases for real property up to a final appeal to the Commissioner.

8 As a remedy for this radical defect,

I would propose that an institution fee be established on the graduated scale of the 6th clause, or security given for the payment of the same, as may be awarded on decree, such award to be forthwith recovered from the litigant parties by summary process, under the orders of the Superintendent - the same Rule to apply to appeals likewise. With this improvement a further trial may safely be given to the Rules now in force, and in my humble opinion, they will be found well suited to meet the wants of the community in this respect.—

I have the honor to be
Sir
Your most Obedient Servant

R Bird
Superintendent
Bangalore Division

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From

the Superintt.

of Bangalore -

Dated 23rd & Rect. 25th January -

Acknowledges letter of the 8th Inst. with a Draft of amended Rules for the Division of Pensions and unfounded Litigation and begs leave to submit his sentiments thereon, founded on local Experience. -

34 [illegible]

1842 4

To, The Sup.t Ashtaysam

Dated 23d. February

Directly to letter of 24th
Ultimo the 22 conveys
my direction in cases where
hostilities ceases to the exten
Specified in the Jud.l
Conjunction we unable
to carry the demand

apparently

No 141.

Mysore Comm'rs Office

Committee
2 - 843
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To The Superintendent
of Astagram

Sir,

I have the honor to ac-
knowledge the receipt of
your letter No 22 of 2 4th
Ultimo requesting the
Commissioners instruc-
tions in cases where par-
ties fined to the extent
specified in the Judicial
Notification of 17th March
1841 are unable to satis-
fy the demand - and in
reply I am instructed to
say that when a fine
awarded by the Super
intendent or the Huzoor
Sheristadar in flagrant
cases of Malice and
false hood is not re-
coverable, the offending
party should be punish
-ed by a term of im-
-prisonment not exceed-
-ing six months proc-
-portioned in duration
to the aggravation of his
offence, rather than to
the amount of fine
due -

In resorting to fine
as a punishment,
apparently

Same

apparently well calculated to meet offences of this nature, so common in our courts of law, the readiest mode of regulating the amount seemed to be to lay down a rule, that the fine was in no case to exceed the authorized fee to which it was added. But in the event of imprisonment being of necessity resorted to from the unwillingness or inability of the party to pay a fine, the extent of punishment may then with advantage be regulated in reference to the moral turpitude of the transaction: as a case may occur in a small suit in which the means resorted to in the attempt at fraud, may be more aggravated than in another suit of a larger amount.

3. But in the case of the non-payment of the fee, which is levyable in every court, whenever it appears that

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that an action has been
brought or defended with
an intention to defraud,
it does not appear to
the Commissioners to
be necessary to resort
to the same severity -
4. The usual means
will of course be em -
ployed to secure the
fee, but the emerin -
-stance of the pecunia -
-ry appeal being
made dependent on its
payment within 30 days
from the date on which
the decree of the original
court was delivered or
tendered to an appellant,
under the 9th para of
the Notification of 1st
March 1841, will it is
considered greatly fa
-cilitate its collection,
where property exists,
and will likewise ge
-nerally enable a needy
person to borrow the
sum required, when the
justice of his cause,
and his means of
proof of corruption
or partiality in the
lower court favour
the probability of his
obtaining on appeal
a reversion of the
original

original decree -

5th In thus discriminating between the fine and fine authorized under the provisions of the Judicial notification, above referred to, the Commissioner is desirous of making it more apparent that the object of the former is to check fraudulent and vexatious litigation in all its degrees, while the latter is to be strictly considered as a punishment and favorable in addition to the former, only by the Superintendent, the Hoozoor adawlut, and the Commissioner, in more flagrant cases of malice and falsehood

Bangalore
23rd February
1842

J.B

No 240.

To

The Officiating Secretary

to the Commissioner for the

Govt of the Territories of the

Rajah of Mysore

Sir,

I have the honor to request the Commissioner's instructions regarding a subject which has occupied from time to time a part of my attention, and which is somewhat involved in perplexities, viz: the mode in which claims of various sorts for lands of all kinds should be investigated, whether in the Revenue department, and therefore finally by the Superintendent himself, or in the Adawlut and in the usual routine of the Courts.

2. From my experience & other Impressions I am aware that the

same,

same mode of disposing of such claims is not adopted in all and as claims for land are subjects of daily occurrence, I submit my opinions to the Commissioner with a view to the correction of the practice of this Division in the event of its not being equally approved of with that which obtains in others.

3. On my first assuming charge of this Division I found that a large proportion if not all of the claims for land of all descriptions was settled in the Revenue Department by the Superintendent himself, and considering the number of Talookas in which property in land is saleable and the numerous claims it gives rise to, it is not surprising that a good deal of delay arose in the settlement of them - I have since discouraged as much as

possible the disposal in the Revenue Department of claims for land where the claim was clearly for a saleable property in the land, but as no attempt has yet been made at defining the difference between such as should be settled in the Revenue and the Adawlut Department, they are still frequently forwarded in the former.

4. A difficulty also here occurs in the construction to be placed on the Adawlut and other rules. The Adawlut rules declare that claims for Sircar land are not to be tried in the Courts while suits regarding land are declared to have a special privilege as regards appeals.

5. In this Division all land is called Sircar land excluding Sircar Jody except Dooly,

Pottar and Puramanium. Only land is already excepted from the jurisdiction of the Courts by the Ststute of 9th September 1835 viz also Pottar land where it belongs to the Pujary of the village, he being one of the Para Balauty. Some Pottar therefore, and the little Puramanium which there is in the Division seem to be the only land which by the regulation is subject to litigation in the Courts, and I believe that this has proved an obstruction to a clear understanding of the subject generally.

6. The mode which occurs to me as most convenient for dis. posing of the broad features of the case, is, to consider saleable land as subject to the Courts, in all cases which affect a saleable property in it. about Candayam land which does

not bear a saleable value there are
seldom any disputes, and such as
occur may without difficulty be
settled in the Revenue Department,
as appears to be the intention of
the Original rules. Buttayes land
is rarely disputed except in a boundary
case which is now always settled
in the Revenue Department. Only
Dottar Jodly and Sperumanicum
complete the list. The two first are
clearly defined in the Letter above
alluded to. but the two last do
not seem to have been so especially
in cases of sale mortgage and de-
puted claim to inheritance and
shares - Perhaps the most advisable
way of settling these would be to
receive the claim as a Revenue one
and to consider all claims for
Enams to come under that head,
but

but to leave a discretion for referring such claims to the Courts.

7. The above will however comprise only the general heads under which the complaints may be settled. There are some details which seem perplexing, and which regard the saleable land of the Inalnaad.

8. There are claims for a share of a penny as a Hissadar, or relation and for the name to be entered as a sharer in the general Puttah. Cases of mortgage where the name of one of the parties stands on the puttahs while the other possesses the land, of Lungdars on Genealogy or renting farmers for rent now settled in the Aldawlat; where persons have gone away for some years, giving their land into the charge of some

person who refuses to give it up
or had sold it, or where they have
gone away, and find some stranger
in possession with or without a Sug
-willy Chitty from the Sircar - This
case has been provided for by the
Istimar of 12th April 1839, confirming
the Cultivator in possession, if not
opposed within one year from that
date but is that Istimar to be
put in force by the Zaloot Court
or by the Revenue department

9. In various ways therefore
there are claims for whole wurgs,
and parts of wurgs, affecting both
the property in the land and the
person who shall be recognized
as Wurgdar by the Sircar - There
is another sort of claim, where the
undoubted owner of a wurg claims
from

from the undoubted owner of another burg, one field as belonging to his burg. From these and some other cases which I have not enumerated, it is perhaps difficult to extract any principle, by which the disposal of every one of them may be determined, but as the practice has hitherto been undeterminate, and it is desirable that this confusion should cease, the one stated above in para 2 seems sufficient, that all claims for prestations in saleable land should like those for money and moveables, be litigated in the Courts, and the final decision of the Courts should be an authority for the necessary alterations of names in Pattahs &c in the Revenue department, the Courts being of course required to attend to the rules of the

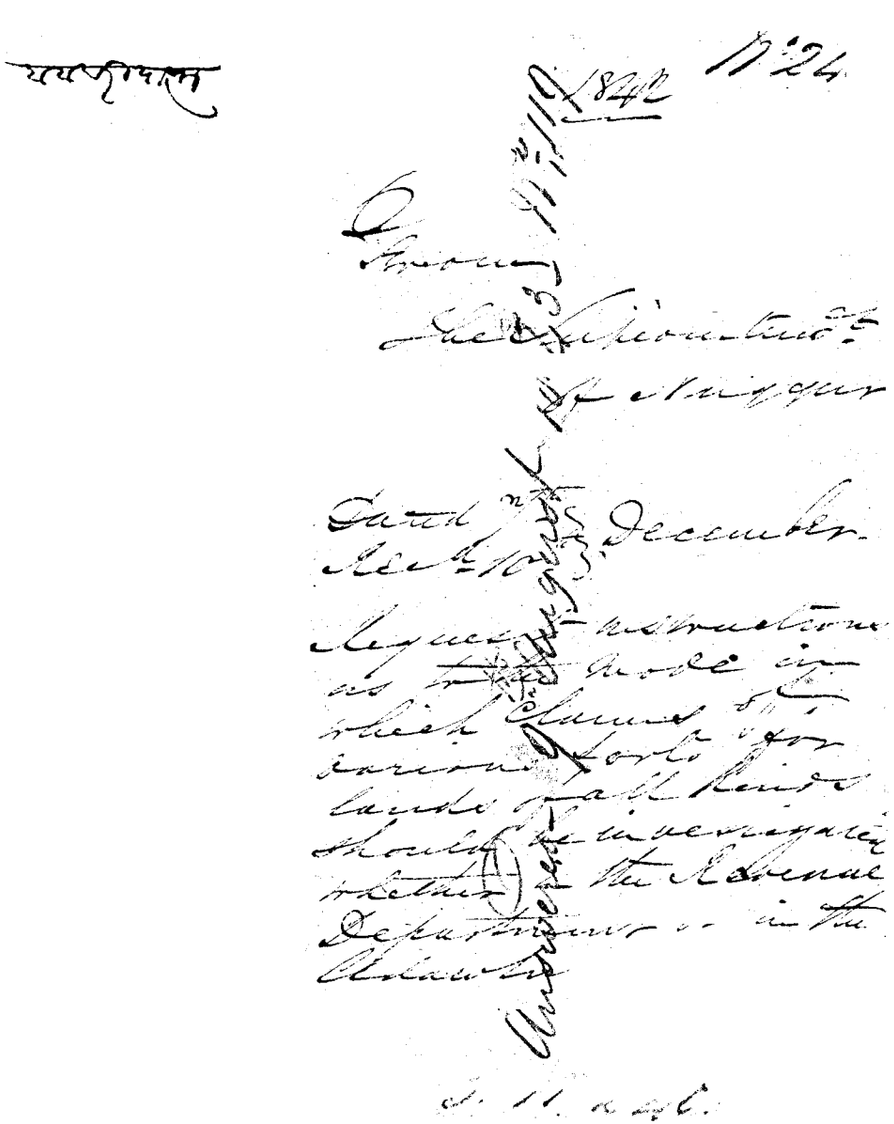
Revenue department where these,
as in the Letter of 1839 above
alluded to, affect the right of pro-
perty in land.

10. All matters concerning
abetment and Jumma already vested
"be disposed" of in the Revenue De-
partment, and such as are not
clearly belonging to either class, as
convenience might dictate. —

I have the honor to be,
Sir,
Your most Obed. Servant

J. C. Pulleine
Superintendent

Assistant Commissioner
Superintendent's Office
Tenasserim Provinces
7th December
1842.



Superintendents Office

Dated

File No

Dis No

Spo 74

Dated 11th April 1843

To

The Secretary to the Commissioner

for the Government of the Territories

of the Rajah of Mysore

Bangalore

Sir,

With reference to the 2d paragraph of the Circular letter from the Commissioner's Office, Spo 50 of the 2d December 1842, I have the honor to transmit herewith a half yearly List of defaulters in the several Courts of this Division up to the end of December 1842, as therein directed.

I have the honor to be

Sir

Your most Obedient Servant

R Rudd

Superintendent

Bangalore Division

1843 No 75

From
The Superintendt
of Bangalore -

Dated 11th April
Rect 12th April.

Referring to Circular
Rr. of date 2nd Sept
last - sends a half
Yearly List of Litigation
in the Civil Courts
of his Division up to the
2nd Sept. 1842 —

No 74

Superintendent's Office
Bangalore 6th June 1863.

No. 110

To

The Secretary to the Commissioner
for the Government of the Territories of
the Rajah of Mysore

Sir,

In the 9th Paragraph of my General Report on the Judicial Department dated 27th December last No 261, I had the honor to bring to the Commissioner's notice the inconvenience attending the present system of carrying to account the amount of fees, fines and deposits connected with Civil suits, and I now beg leave to transmit a Hindwee Gadasht pointing out more in detail the inconvenience referred to, and to solicit the Commissioner's permission to adopt from the commencement of the ensuing July, the plan suggested by me of keeping such sums in Amanut until the suits to which they refer are finally decided.

2. I beg to take this opportunity of

of again respectfully soliciting the attention of the Commissioner to the case of Timmarayah mentioned in the 12th Para: of the above report as an instance of prolonged confinement for a trifling debt.-

I have the honor to be
Sir
Your most obedient servant

Superintendent
Bangalore Division

1843 — Rs. 115

From
The Superintendent
of Bangalore &c.
Dated 6th June
Rec'd 7th 3 0 3

Reads a Hundavi
Yaddasht, and solicits
permission to adopt,
from the ensuing Fasly,
the plan proposed in
his Judicial report of
27th December last, of
keeping in Amanut, the
amount of Jeds fines &c.
until suits are finally
decided. Again urges to
notice the case of Timma-
Troyah, a debtor in the Jail.

1. Rs. 110
Rec'd with 2 Pgs. Chart.

To the Superintendent of Bangalore.

By desire of the Commissioner I have the honor to acknowledge the receipt of your letter No 1104 of the 6th Instant, and with reference to the subject of Fees, fines, and deposits connected with civil suits, to convey to you the authority to adopt from the commencement of Fasly 1253 — the plan recommended by you in your Judicial report of the 27th Decr 1843 — viz. to keep all such sums in Amanut in your Treasury until a final decision be passed on the case to which they belong

July

No Mode of entering Items as at present under the Savoy Summary, and having them into the General Treasury.

The next subject on the Handbook of Compromising Actions for Long Bonds is under the Commissioners consideration.

Yelverton
17th June 1843

1843 No 98.

To The Superintendent of Bangalore

Dated 17th June
Desp'd

In reply to letter of the 6th Instant Capt. Cameron authority to adopt from the Commencement of the ensuing Fasly 1253 the plan recommended in his Annual Report of the 27th December 1842.

Brig above

No 119 — No 6

To the Superintendent of Mysore

Sir,

I have the honor to forward herewith Mr Devereux's letter No 2410 of the 7th Dec.r last requesting instructions on the mode of disposing of claims to the several sorts of land therein enumerated, whether by filing suits in the Courts, or by reference to the revenue authorities I have the honor by desire of the Commissioner to observe that in determining the authority before whom such questions should come there are two principal points to be attended to viz.t Whether the lands referred to are "Sircar lands" that is such as Cuddayem and Buttaye rented year by year, or lands given by the Sircar for Sircar services; both of these are to be referred to the revenue authorities alone

~~Included in the latter are the Dasa Bahatee lands, which do not include the Conjivees held as enfranchised by Mr Devereux, but to which the Cutcherry Peons lands, (the~~
~~restored.~~

All the crown lands
where Wholly crown
or in part only may be
the subject of suits in the
Judicial Courts. among
-st them may be enumerated
Potter, Sodee, and
Newmanium

With regard to
the peculiar tenures
which exist in the
Protectorate such as
Kings, it will be advisable
that all money questions
arising upon these should
be heard by the Courts,
but that the question
of actual possession of
the farms should be
settled by a reference to
the revenue authorities
& possible guided by the
engagements of the parties
and the manner of the
distinct - & the evidence of Rights.

Should cases arise
not provided for by the
above rules, it will be
advisable to settle them
in accordance with the
suggestion contained
in the 6th Para of
Mr. Decrees letter under

Reply. Mat-s "to consider
"saleable land as
"subject to the Courts
"in all cases which affect
"saleable property in it

Bangalore
9th August 1843.

1823 No 119.

To
The Superintt
of Indian Affairs

Dated
Despd 9th August

In reply to the Honble
Wm Stevenux's letter
7th Sept last No 240,
sends instructions
on the subject of dis-
posing of Claims to
several sorts of land
therein enumerated

No. 160.

To

The Secretary

to the Commissioners for the
Govt. of the Territories of the
Royal of Bylstone.

Sir,

I have the honor to forward
the Return of Fees called for
in your Circular letter No. 18 of
the 2nd Instt. which it has been
found impossible to prepare
sooner, owing to its having been
necessary to refer to the Talooks
for part of the information, requisite
to complete them.

I have the honor to be,

Sir

Your most Obt. Servant

Surgeon Division
Superintt. Office
Sinagra 24th July
1864.

Superintendent

1844

From
the Superintendt
of Navigation.

Dated 24th Inst.
Recd 27th Inst.

Transmt Returns of Fees
called for in
Circular No. 18 of the
2nd Inst.

Chittledroog Division

Superintendents office

No. 177

To,

The Secretary to the Commissioner

for the Government of the

Territories of Mysore

Bangalore

Sir,

I have the honor to transmit herewith a Return in English and Canarese of Fees imposed from 1st July 1841 to 31st December 1843 prepared agreeably to the Form accompanied your Circular letter No. 18 of the 2nd July last.-

I have the honor to be,

Sir,

Your most obedient Servant

Superintendent

Soonkoor

12th August

1844

1844

Rec. 1844

From
The Superintt
of Chatham Dock.

Dated 12th August.
Rec. 14th do

Lords Return of Men employed from 1st July 1841 to the 31st December 1843 specifying respectively the Storm sent with Circulars the 2nd July last.

Rec. 1844